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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,415	05/19/2005	Eiji Tsuru	Q88086	5974
23373 7590 12/26/2007 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER BELLINGER, JASON R	
			ART UNIT 3617	PAPER NUMBER
			MAIL DATE 12/26/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/535,415	Applicant(s) TSURU ET AL.	
	Examiner Jason R. Bellinger	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 4-6,8,9,13-15 and 18-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,7,10,11,16 and 17 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Claims 4-6, 8-9, 13-15, and 18-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11 October 2007.
2. Applicant's election with traverse of claims 1-3, 7, 10-12, and 16-17, drawn to the invention formed by elements shown in Figures 3-7, 9, 12, and generally 1-17, in the reply filed on 11 October 2007 is acknowledged. The traversal is on the ground(s) that the species in the election/restriction requirement were "divided according to exemplary *components* of the present application, but *not* the embodiment or the contents of the present invention." The Applicant then argues that the "effects of the embodiments in the present application cannot be realized *by use of only one of the components thereof*, i.e., only one of the above species a-d."

This is not found persuasive because the election/restriction required set forth multiple embodiments of each element of the complete invention (namely an endless track), and then required the Applicant to elect a single embodiment of EACH element of the invention. Clearly, an election of an embodiment from EACH element, which as a whole make up the invention, represents one of many configurations disclosed by the Applicant. The Applicant was never asked to elect only a SINGLE component of the complete assembly to represent the invention, which was clearly set forth in the election/restriction requirement.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 11, and 16-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is indefinite due to the fact that it is unclear what is actually being claimed by the limitation that the rails are provided at "outer sides" of the protruding portion, or by the limitation of the connecting members being formed at "further outer sides" of the rails.

Claim 11 is indefinite due to the fact that it is unclear what element of the invention includes the "end sides" set forth in line 3. Furthermore, the phrase "a staggered form" is a double recitation. This limitation has been previously set forth in claim 10, from which claim 11 depends. Therefore, it is unclear whether the "Staggered form" set forth in claim 11 is the same as that previously set forth in claim 10, or is an additional element of the invention.

Claim 16 is indefinite due to the fact that it is unclear what element(s) of the invention are actually being referred to by the terms "therein" and "thereof".

Claims 16-17 are indefinite due to the fact that it is unclear what is actually being claimed by the phrase "outer sides". No directional indicators (i.e. lateral, transverse,

longitudinal, etc.) have been provided to clearly define the location of these "outer sides".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-3, 7, 10-11, and 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Katoh et al ('044). Figure 83 of Katoh et al shows a rubber crawler having an endless rubber elastomer, core metals 5 with protruding portions extending from an inner circumference of the rubber elastomer, and pairs of left-hand and right-hand side wing portions (collectively 4) embedded in the rubber elastomer. Lugs are formed on the outer circumference of the rubber elastomer. Two connecting members (namely a

connecting ring 21 and ring 38) are longitudinally fitted onto each left-hand and right-hand wing portions 4, such that adjacent core metals 5 are sequentially connected to each other.

As best understood, Rails are provided at outer sides of the protruding portions of the core metals 5. The area of the wing portions 4 where the connecting members (21 & 38) are fitted are at further outer sides of the rails. The wing portions have a circular cross-section. The connecting members (21 & 38) each has circular inner circumferential surfaces. The connecting members (21 & 38) are staggered in the longitudinal direction of the rubber elastomer. The lugs substantially cover the transverse ends of the connecting members (21 & 38). A portion of the core metals 5 are exposed from the rubber elastomer, while other portions thereof, along with the wing portions 4 and the connecting members (21 & 38), are embedded within the rubber elastomer. Expanded portions are provided at outer sides of the protruding portions of the core metals 5.

Allowable Subject Matter

7. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references show endless tracks including connectors attached to adjacent core bars. For example, Pringiers shows a track of the type described above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason R. Bellinger whose telephone number is 571-272-6680. The examiner can normally be reached on Mon - Thurs (9:00-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason R Bellinger
Primary Examiner
Art Unit 3617

